



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We make Indiana a cleaner, healthier place to live.*

Frank O'Bannon  
Governor

Lori F. Kaplan  
Commissioner

Tuchman Cleaners

Site # 1991 02 503

General Correspondence

[www.in.gov/idem](http://www.in.gov/idem)

November 15, 2002

BY FACSIMILE AND U.S. MAIL

Ms. Amber J. Vojak  
2164 C J Lane  
La Belle, Florida 33935

Re: Request for Access by Tuchman Cleaners for Installation and Sampling of  
Groundwater Monitoring Wells at 4360 – 4390 N. Keystone Avenue, Indianapolis,  
Indiana

Dear Ms. Vojack:

I am in receipt of your November 14, 2002 letter responding to my November 12, 2002 letter addressing the inability of Tuchman Cleaners to reach an agreement with your client regarding access to the property at 4360 – 4390 N. Keystone Avenue to install and sample groundwater monitoring wells. I appreciate Mr. Hyska's desire to protect his interests against being held liable for contamination for which his property is not a source, as well as his willingness to amicably settle this matter and to allow the work to go forward.

In an effort to assure your client that IDEM has no interest in ascribing liability or assigning response costs to your client for contamination that is determined to have come from an offsite source and which he did not exacerbate, I again draw your attention to IDEM's Nonrule Policy Document, "Property Containing Contaminated Aquifers," (January 30, 1997). This document discusses the instances in which IDEM, using its enforcement discretion under applicable laws, may decide not to pursue a potentially liable party for response costs associated with a release of petroleum or a hazardous substance that results from subsurface migration in an aquifer from an offsite property. This nonrule policy document was issued to address concerns raised by owners of property just like your client, owners of property to which contamination has migrated in an aquifer, as well as lenders and prospective purchasers of such property. The intent of the policy is to lower the barriers to transfers of such property by reducing uncertainty regarding the possibility that IDEM may take actions against such landowners, and to inform property owners that under certain circumstances they can take certain steps and keep certain records to prevent themselves from falling into the broad net of State Cleanup liability. Cooperating with reasonable requests for access is considered one of those steps.

In addition to my belief that the access agreement proposed by Tuchman Cleaners (absent paragraph 10) meets IDEM's expectations of a reasonable effort to obtain access, my previous recommendations that Mr. Hyska sign the access agreement proposed by Tuchman Cleaners were intended to help him comply with the criteria outlined in the "Contaminated Aquifers" policy and intended to provide him protection from liability in the future, not the opposite.

Having said that, in response to your suggestion, IDEM does not intend to become a party to an access agreement between your client and Tuchman Cleaners. If we were to sign an agreement pertaining to access for this investigation, it would be an administrative order from the agency with both parties as respondents. I don't believe that your client, Tuchman Cleaners, or IDEM desire that outcome. However, clearly understanding the concerns of your client, in conjunction with this letter, IDEM is issuing your client a "No Current State Cleanup Interest Letter" (attached) which is intended to clarify IDEM's position on the necessity of an environmental response action on your client's property. The purpose of such a letter is to provide a property owner with a degree of comfort regarding the status of the property from the viewpoint of potential enforcement by IDEM. I hope that the attached site status letter, in conjunction with the terms of the access agreement ultimately signed by your client and Tuchman Cleaners, will satisfy your client that he is adequately protected from incurring costs and potential liability for contamination on his property from an off-site source.

IDEM's intent is not to ascribe liability to your client for contamination determined to have come from an offsite source and which he (or operations on his property) did not exacerbate. Nor is it IDEM's intent to limit his ability to protect his interests in this process. However, IDEM is requiring Tuchman Cleaners to undertake an investigation in order to determine whether contamination has migrated offsite from Tuchman Cleaners' property. Without access to your client's downgradient property, Tuchman Cleaners' investigation will lack relevant information needed to develop a comprehensive and appropriate plan to remediate any contamination in the area that may have migrated off the Tuchman Cleaners property. Your client's cooperation is a crucial part of this effort to reduce environmental contamination in the area. In addition, as I have mentioned before, such cooperation will benefit him in the future should he ever find himself in the position of having to raise a third-party defense to liability for contamination- a position in which the attached site status letter should assure Mr. Hyska IDEM does not intend to put him.

Please let me know if you have any further concerns regarding this matter.

Sincerely,



Meredith Gramelspacher  
Office of Legal Counsel, IDEM

cc:

Ms. Dawn Shirley, IDEM OLQ

Mr. R. Gregory Hyska, RGH & Associates, LLC, by U.S. Mail